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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,729	02/10/2004	Steven Joseph Howser	110817-01NP	1545
27189 7590 03/26/2008 PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 530 B STREET SUITE 2100 SAN DIEGO, CA 92101				
EXAMINER SOREY, ROBERT A				
ART UNIT 4194		PAPER NUMBER		
NOTIFICATION DATE 03/26/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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PTONotifications@procopio.com

Office Action Summary

Application No.

10/775,729

Applicant(s)

HOWSER ET AL

Examiner

ROBERT SOREY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Examiner's Note

1. The Examiner would like to make the applicant aware that U.S. Patent 6,730,024 to Freyre et al. is associated with U.S. Patent Publication 2002/00135116 to Freyre et al. which has a publication date of January 31, 2002.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-2, 5, 8-12, and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,730,024 to Freyre et al.
4. As per claim 1, Freyre et al. teaches an automatic patient compliancy monitoring method, comprising:
 - communicating a patient compliancy data generating device and a charging and communication station (Fig. 1 ele. 54; and Fig. 2, ele. 60)(see: column 5, lines 25-29; and column 6, lines 6-9);
 - transmitting patient compliancy data to the charging and communication station (Fig. 1, ele. 54; and Fig. 2, ele. 60)(see: column 5, lines 25-29; and column 6, lines 6-9);

--charging the patient compliancy data generating device with the charging and communication station (Fig. 1 ele. 54; and Fig. 2, ele. 60)(see: column 5, lines 25-29; and column 6, lines 6-9);

--communicating the charging and communication station and a central server (Fig. 2, ele. 68; and Fig. 3, ele. 88, 90, and 94)(see: column 6, lines 13-17 and lines 51-67);

--transmitting patient compliancy data from the charging and communication station to a central server (Fig. 2, ele. 68; and Fig. 3, ele. 88 and 90)(see: column 6, lines 13-17 and lines 51-67);

Freyre et al. fails to specifically point out:

--communicating the central server and a clinician computer;

However, Freyre et al. does state that numerous "web servers...are provided and provide a secure access for this processed data over the Internet through a firewall...for access by individual patients...and medical personnel" (Fig. 3, ele. 90-92, 98, 100, and 104)(see: column 6, lines 51-67, specifically lines 64-67). Freyre et al. further teaches an embodiment of the envisioned website pages (Fig. 7-14)(see: column 7, lines 1-51) that the patients and medical personnel can access (see: column 7, lines 52-56).

It is inherent and well known to a person of ordinary skill in the art at the time the invention was made, that when medical personnel access web pages over the Internet, he or she must have an operable computer to access the information, and "communicating the central server and a clinician computer" occurs.

Freyre et al. further teaches:

--transmitting patient compliancy data from the central server to a clinician computer (Fig. 3, ele. 90-92, 98, 100, and 104)(see: column 6, lines 51-67; and column 7, lines 1-51, specifically lines 1-2);

--generating a patient use report from the patient compliancy data (Fig. 7-14)(see: column 7, lines 1-51, specifically lines 48-51).

5. As per claim 2, Freyre et al. teaches the invention as claimed, see discussion of claim 1, and further teaches:

--the patient compliancy data generating device is a medically therapeutic device that provides a therapeutic benefit to a patient (see: column 1, line 15 through column 2 line 39; specifically column 1, lines 15-21), and communicating the patient compliancy data generating device and the charging and communication station includes communicating the patient compliancy data generating device and the charging and communication station (Fig. 1, ele. 54; and Fig. 2, ele. 60)(see: column 5, lines 25-29; and column 6, lines 6-9) after one or more therapy treatments (see: column 5, lines 30-34) on the patient with the patient compliancy data generating device and transmitting patient compliancy data to the charging and communication station includes automatically downloading patient compliancy data to the charging and communication station (see: column 3, lines 6-20).

6. As per claim 5, Freyre et al. teaches the invention as claimed, see discussion of claim 1, and further teaches:

--the patient compliancy data is represented by a unique identifier specific to the patient compliancy data generating device (see: column 4, lines 57-67; and column 8, lines 15-20).

7. As per claim 8, Freyre et al. teaches the invention as claimed, see discussion of claim 1, and further teaches:

--communicating the central server and a clinician computer includes communicating to the central server over the internet with the clinician computer (Fig. 3)(see: column 2, lines 41-50; column 3, lines 6-15; column 6, lines 64-67; and column 7, line 52 through column 8, line 42).

8. As per claim 9, Freyre et al. teaches the invention as claimed, see discussion of claim 1, and further teaches:

--generating a patient use report from the patient compliancy data includes (Fig. 7-14)(see: column 7, lines 1-62) generating a patient use report at the central server and transmitting the report to the clinician computer (Fig. 3)(see: column 6, lines 51-67).

9. As per claim 10, Freyre et al. teaches an automatic patient compliancy monitoring system, comprising:

--a patient compliancy data generating device for use with a patient, the patient compliancy data generating device configured to generate and store patient compliancy data (Fig. 1, ele. 20 and 32)(see: column 4, lines 35-56; and column 5, line 61 through column 6, lines 5);

--and a charging and communication station (Fig. 2, ele. 56)(see: column 6, lines 6-9) configured to receive transmitted patient compliancy data from the patient

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compliance data generating device, charge the patient compliance data generating device (see: column 5, lines 25-29), and communicate with a central server and transmit patient compliance data thereto (see: column 3, lines 14-22) for reporting to a clinician computer for patient compliance verification (see: column 7, lines 48-51).

Freyre et al. does to specifically teach a "clinician computer"; however, Freyre et al. does state that numerous "web servers...are provided and provide a secure access for this processed data over the Internet through a firewall...for access by individual patients...and medical personnel" (Fig. 3, ele. 90-92, 98, 100, and 104)(see: column 6, lines 51-67, specifically lines 64-67). Freyre et al. further teaches an embodiment of the envisioned website pages (Fig. 7-14)(see: column 7, lines 1-51) that the patients and medical personnel can access (see: column 7, lines 52-56).

It is inherent and well known to a person of ordinary skill in the art at the time the invention was made, that when medical personnel access web pages over the Internet, he or she must have an operable computer in order to access the information.

10. As per claim 11, Freyre et al. teaches the invention as claimed, see discussion of claim 10, and further teaches:

--the patient compliance data generating device is a medically therapeutic device configured to provide a therapeutic benefit to a patient (see: column 1, line 15 through column 2 line 39; specifically column 1, lines 15-21).

11. As per claim 12, Freyre et al. teaches the invention as claimed, see discussion of claim 10, and further teaches:

--the patient compliancy data generating device and the charging and communication station are configured for automatic downloading of patient compliancy data to the charging and communication station (see: column 3, lines 6-20).

12. As per claim 17, Freyre et al. teaches the invention as claimed, see discussion of claim 10, and further teaches:

--the central server is configured to be communicated to by a clinician computer over the internet (Fig. 3)(see: column 2, lines 41-50; column 3, lines 6-15; column 6, lines 64-67; and column 7, line 52 through column 8, line 42).

13. As per claim 18, Freyre et al. teaches the invention as claimed, see discussion of claim 10, and further teaches:

--the central server is configured to generate a patient use report (Fig. 7-14)(see: column 7, lines 1-62) for transmission to the clinician computer (Fig. 3)(see: column 6, lines 51-67).

14. As per claim 19, Freyre et al. teaches an automatic patient compliancy monitoring method, comprising:

--using a patient compliancy data generating device to provide a medically therapeutic benefit to a patient (see: column 1, line 15 through column 2 line 39; specifically column 1, lines 15-21);

--docking the patient compliancy data generating device with a charging and communication station (Fig. 1, ele. 54; and Fig. 2, ele. 60)(see: column 5, lines 25-29; and column 6, lines 6-9) after one or more therapeutic treatments with the patient compliancy data generating device (see: column 5, lines 30-34);

--charging the patient compliancy data generating device with the charging and communication station (Fig. 1 ele. 54; and Fig. 2, ele. 60)(see: column 5, lines 25-29; and column 6, lines 6-9);

--transmitting patient compliancy data from the patient compliancy data generating device to the charging and communication station (Fig. 1, ele. 54; and Fig. 2, ele. 60)(see: column 5, lines 25-29; and column 6, lines 6-9);

--transmitting the patient compliancy data from the charging and communication station to a clinician computer over the internet (Fig. 3)(see: column 2, lines 41-50; column 3, lines 6-15; column 6, lines 64-67; and column 7, line 52 through column 8, line 42) for verifying proper use of the patient compliancy data generating device by a patient (Fig. 7-14)(see: column 7, lines 1-62).

Freyre et al. does to specifically teach a "clinician computer"; however, Freyre et al. does state that numerous "web servers...are provided and provide a secure access for this processed data over the Internet through a firewall...for access by individual patients...and medical personnel" (Fig. 3, ele. 90-92, 98, 100, and 104)(see: column 6, lines 51-67, specifically lines 64-67). Freyre et al. further teaches an embodiment of the envisioned website pages (Fig. 7-14)(see: column 7, lines 1-51) that the patients and medical personnel can access (see: column 7, lines 52-56).

It is inherent and well known to a person of ordinary skill in the art at the time the invention was made, that when medical personnel access web pages over the Internet, he or she must have an operable computer in order to access the information.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,730,024 to Freyre et al. in view of U.S. Patent 4,658,357 to Carroll et al.

17. As per claim 3, Freyre et al. teaches the invention substantially as claimed, see discussion of claim 1, and further teaches:

--charging the patient compliancy data generating device with the charging and communication station occurs simultaneously with transmitting patient compliancy data to the charging and communication station (see: column 3, lines 6-20).

Freyre et al. does not specifically teach that the charging and transmitting functions occur "simultaneously". However, Carroll et al. teaches a time and accounting system that utilizes "charging and download unit" for "portable units" (Fig. 1, ele. 32 and 24), that recharges the portable transceiving units while "the contents of the memory of the transceiving device may be down-loaded to a central computer system" (see: column 4, lines 21-27). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Freyre et al. and Carroll et al. with the rationale of providing the medical personnel with faster feedback of medical data, and more overall available usage time of the device since two functions can be performed at the same time.

18. As per claim 13, Freyre et al. teaches the invention substantially as claimed, see discussion of claim 10, and further teaches:

--the patient compliancy data generating device and the charging and communication station are configured for charging of the patient compliancy data generating device by the charging and communication station with simultaneous transmission of patient compliancy data to the charging and communication station (see: column 3, lines 6-20).

Freyre et al. does not specifically teach that the charging and transmitting functions occur "simultaneously". However, Carroll et al. teaches a time and accounting system that utilizes "charging and download unit" for "portable units" (Fig. 1, ele. 32 and 24), that recharges the portable transceiving units while "the contents of the memory of the transceiving device may be down-loaded to a central computer system" (see: column 4, lines 21-27).

19. Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,730,024 to Freyre et al. in view of U.S. Patent 7,050,984 to Kerpelman et al.

20. As per claim 4, Freyre et al. teaches the invention substantially as claimed, see discussion of claim 2, and further teaches:

--communicating the charging and communication station and the central server and transmitting patient compliancy data from the charging and communication station to the central server occurs automatically (see: column 3, lines 14-20) at an off-peak, designated time.

However, Freyre et al. fails to teach that data transfer occurs at an "off-peak, designated time". Kerpelman et al. teaches an integrated interactive service to a plurality of medical diagnostic systems that conducts "data communication sessions...scheduled for convenient times, such as during off-peak hours, nighttime hours, weekends, and so forth" (see: column 13, lines 8-43, specifically, lines 8-14). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Freyre et al. and Kerpelman et al. with the rationale of having the data transfers occur at "convenient times" (see: Kerpelman et al., column 13, lines 8-14) when the rate of data transfer is more likely to be faster and more efficient, and the cost of transferring data is more likely to be cheaper and thereby present a cost savings.

21. As per claim 14, Freyre et al. teaches the invention substantially as claimed, see discussion of claim 10, but fails to teach:

--the charging and communication station is configured to automatically transmit patient compliancy data to the central server occurs at an off-peak, designated time.

However, Kerpelman et al. teaches an integrated interactive service to a plurality of medical diagnostic systems that conducts "data communication sessions...scheduled for convenient times, such as during off-peak hours, nighttime hours, weekends, and so forth" (see: column 13, lines 8-43, specifically, lines 8-14).

22. Claims 6-7 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,730,024 to Freyre et al. in view of U.S. Patent 6,701,183 to Baker et al.

23. As per claim 6, Freyre et al. teaches the invention substantially as claimed, see discussion of claim 1, and further teaches:

--the central server includes an information database specific to the patient compliancy data generating device, and the information database is automatically updated with the patient compliancy data (see: column 3, lines 1-22; column 4, lines 59-64; column 6, lines 51-67; and column 8, lines 15-20).

Freyre et al. does not specifically teach that the servers and memories house a "database". Baker et al. teaches a long term atrial fibrillation monitor that utilizes a "compliance database" (Fig. 6, ele. 80)(see: column 6, lines 42-48). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Freyre et al. and Baker et al. with the rationale of housing "records linking patients, per their identifications, to dates on which a compliance signal was received" (see: Baker et al., column 6, lines 54-57) for record in patient files, and to use in patient care assessments.

24. As per claim 7, Freyre et al. teaches the invention substantially as claimed, see discussion of claim 1, but fails to teach:

--transmitting patient compliancy data from the central server to a clinician computer includes automatically sending an electronic mail communication to the clinician computer with the patient compliancy data.

However, Baker et al. teaches automatically sending medical data via email (see: column 7, lines 46-51).

25. As per claim 15, Freyre et al. teaches the invention substantially as claimed, see discussion of claim 10, and further teaches:

--including a central server including an information database specific to the patient compliancy data generating device, the information database storing the patient compliancy data (see: column 3, lines 1-22; column 4, lines 59-64; column 6, lines 51-67; and column 8, lines 15-20).

Freyre et al. does not specifically teach that the servers and memories house a "database". Baker et al. teaches a long term atrial fibrillation monitor that utilizes a "compliance database" (Fig. 6, ele. 80)(see: column 6, lines 42-48).

26. As per claim 16, Freyre et al. teaches the invention substantially as claimed, see discussion of claim 15, but fails to teach:

--the central server is configured to automatically send an electronic mail communication to the clinician computer with the patient compliancy data.

However, Baker et al. teaches automatically sending medical data via email (see: column 7, lines 46-51).

Conclusion

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT SOREY whose telephone number is (571)270-3606. The examiner can normally be reached on Monday through Friday 7:30AM to 5:00PM (EST).

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28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Kyle can be reached on (571) 272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert Sorey/
Examiner, Art Unit 4194
19 March 2008

/Charles R. Kyle/
Supervisory Patent Examiner, Art Unit 4194